



Paul Helliker
Director

Department of Pesticide Regulation



Gray Davis
Governor
Winston H. Hickox
Secretary, California
Environmental
Protection Agency

MEMORANDUM

TO: Scott Paulsen, Enforcement Branch Chief

FROM: Sharon Dobbins, Chief Counsel

DATE: August 27, 2003

SUBJECT: PEST CONTROL ADVISER LICENSING

ISSUE

Are property owners/operators and their employees required to be licensed by the Department of Pesticide Regulation (DPR) as pest control advisers when making decisions in regard to pesticides to be used for agricultural use on the property of the owner/operator?

OPINION

Property owners/operators and their employees are not required to be licensed by the Department of Pesticide Regulation as pest control advisers when making decisions in regard to pesticides to be used for agricultural use on the property of the owner/operator.

DISCUSSION

The purpose of this memorandum is to respond to your question "Is a PCA license required for an owner/operator or for his or her employee [when determining which pesticides to apply for agricultural use on the property owned/operated by the property owner/operator]."

With certain exceptions not relevant here (such as for government officials of agriculture departments and certain University of California personnel), a person acting, or offering to act, as an agricultural pest control adviser must first obtain an agricultural pest control adviser license from the DPR Director. (Food and Agricultural Code [FAC] section 12001).

Under FAC section 11410, an "agricultural pest control adviser" is a person who offers a recommendation on any agricultural use, holds himself or herself forth as an authority on any agricultural use, or solicits services or sales for any agricultural use.

FAC section 11408 defines "agricultural use" as the use of any pesticide or method or device for the control of plant or animal pests, or any other pests, or the use of any pesticide for the regulation of plant growth or defoliation of plants, *excluding* the sale or use of pesticides in properly labeled packages or containers that are intended for: home use; use in structural pest control; industrial or institutional use, control of an animal pest under the written prescription of a veterinarian; and local districts or other public agencies that have entered into and operate under a specified cooperative agreement with the State Department of Health Services.



FAC section 11411 defines “recommendation” as the giving of any instruction or advice on any agricultural use as to any particular application on any particular piece of property.

The common dictionary definition of “recommend” is to advise or present as worthy of acceptance, and the common dictionary definition of “recommendation” is the act of recommending. Merriam Webster’s Collegiate Dictionary, Tenth Edition. The FAC definition of “recommendation” is consistent with the common dictionary definition, except that the FAC definition pertains to particular advice.

Implicit in the FAC and dictionary definitions of “recommendation”, is that advice is offered or given from one person to another person, in that a person does not give advice to himself/herself (or in the case of a property owner or operator, itself). Similarly, a person “holds himself [herself/itself] forth as an authority” on something to another person, not to himself.

For example, doctors, cosmetologists, and car repair technicians hold themselves forth as authorities in particular areas. A doctor will give advice to a patient; a cosmetologist will give advice to a client; and a car repair technician will give advice to a customer. They do not give advice to themselves, but they may make decisions for themselves – a doctor may decide for herself what type of surgery to have for her own medical condition; a cosmetologist may decide what type of skin treatment she wants; and a car repair technician may decide that his own car needs a rebuilt engine.

The idea of licensing certain individuals who engage “for hire” in certain occupations is grounded in the concept of consumer protection – to protect the public from persons who may purport to have certain knowledge and skills who, in fact, do not possess them.

If a property owner (e.g., grower) or operator wants to decide for himself/herself/itself what pesticides to use for agricultural use on his/her/its property, there is no advice to the public/consumer protection issue and no need for an agricultural pest control adviser license. Similarly, if the property owner/operator has an employee whose job it is to decide or discuss with the employer which pesticides to use for agricultural use on the property owned or operated by his/her employer, there is no advice to the public/consumer protection issue and no need for the employee to have an agricultural pest control adviser license. Employers have employees to do work that the employer has no time to do or because the employer is an entity (e.g., corporation) that can only act through its employees. It is commonly said that “the employee stands in the shoes of the employer.”

Scott Paulsen
August 27, 2003
Page 3

When the provisions of FAC 11410, 11411, and 12001 pertaining to recommendations, pest control advisers, and licensing of pest control advisers were enacted in 1971 (S.B. 1021, Stats. 1971, Ch. 1276) the author of the bill, Senator John Nejedly, obtained unanimous consent for a statement of intent to be printed in the Journal. In the statement Senator Nejedly said, in part:

I am providing herewith further explanation of my intent as author.

Licensing of agricultural pest control advisers or the requirements pertaining to 'recommendations' as specified by sections 11410 and 11411, California Agricultural Code, do not apply to . . . [e]mployees of a firm discussing pest control pertaining to agricultural use of pesticides on that firm's property. . . .

I reviewed the documents you provided and see nothing in the existing laws that would cause us to change the Enforcement Branch position set forth in the March 28, 1983 letter to County Agricultural Commissioners (ENF 83-27) stating that "The operator of the property (either natural person or corporation) is legally responsible for any recommendation written by him or his employee. Licensing as an adviser is not required of either the operator of the property or his employee in this situation."

cc: Paul Helliker
Paul Gosselin
Doug Okumura
Chris Reardon